

DAVID TRUESDELL ET AL.

IBLA 81-86

Decided August 17, 1981

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. AA-16688 and AA-16689.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory

requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

APPEARANCES: David Truesdell, pro se, and on behalf of Jerry D. Bradford and Joe Kelly.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

David Truesdell, Jerry D. Bradford and Joe Kelly, have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 18, 1980, declaring the Four Jokers Nos. 1 and 2 placer mining claims, AA-16688 and AA-16689, abandoned and void for failure to file timely evidence of annual assessment work or notices of intention to hold the mining claims for the 1979 assessment year pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellants' mining claims were located on March 21, 1978, and filed for recordation with BLM on March 24, 1978. Evidence of annual assessment work was filed with BLM on November 1, 1978. However, no further evidence of annual assessment work had been filed with BLM at the time the decision in this case was issued.

In their statement of reasons for appeal, appellants state that an "Affidavit of Annual Labor" covering their two claims was filed with the Seward recording district on October 17, 1979, and that "[o]n or about October 18, 1979, a photo copy of this affidavit was mailed to the Alaska State Office." A copy of this affidavit, submitted on appeal, indicates that it was dated stamped by the Seward recording district on October 17, 1979.

[1, 2] The pertinent regulation, 43 CFR 3833.2-1(c), requires the owner of an unpatented mining claim located on Federal lands after October 21, 1976, to file in the proper BLM office, evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each year following the calendar year in which the claim was located. See 43 U.S.C. § 1744(a) (1976). The claims having been located in 1978, evidence of assessment work or a notice of intention to hold should have been filed with BLM on or before December 30, 1979.

Failure to file an instrument required by 43 CFR 3833.2-1 within the prescribed time period conclusively constitutes an abandonment of the claim. 43 CFR 3833.4(a); see 43 U.S.C. § 1744(c) (1976).

Appellants' filing with the county recorder does not satisfy the filing requirement, where 43 CFR 3833.2-1(c) specifies "the proper BLM office" as the place for filing. Joseph Ojurovich, 54 IBLA 100 (1981); Johannes Soyland, 52 IBLA 233 (1981). Furthermore, where one entrusts a document to the Postal Service for delivery to a BLM office, he is employing the Postal Service as his agent and, consequently, must suffer the penalty for delay or nondelivery of the mailed item. Randal Angeloni, 54 IBLA 56 (1981), and cases cited therein.

When appellants failed to file timely either evidence of assessment work or notices of intention to hold the claims, BLM properly held the claims to have been abandoned and void. John Richard Bodie, 54 IBLA 93 (1981); Robert R. Eisenman, 50 IBLA 145 (1980).

Despite appellants' asserted good faith efforts to comply, in enacting the filing requirements of FLPMA, supra, Congress did not invest the Secretary of the Interior with authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

